INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	5
Conclusion	9

CITATIONS

CASES:

Blitz v. *United States*, 153 U.S. 308	8
Prichard v. *United States*, 181 F. 2d 326, affirmed, 339 U.S. 974	6
United States v. *Bathgate*, 246 U.S. 220	6
United States v. *Gradwell*, 243 U.S. 476	6
United States v. *Mosley*, 238 U.S. 383	6, 7
United States v. *Saylor*, 322 U.S. 385	5, 6

STATUTES:

Enforcement Act of 1870, § 19, 16 Stat. 140, 144, repealed Feb. 8, 1894, 28 Stat. 36	7
18 U.S.C. 241	2

MISCELLANEOUS:

162 A.L.R. 1388-1394	6

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 199

PETER VINCENT CROLICH, SR., RAY WILSON FAIRCHILD and CHARLES JAMES HOLMAN, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 62-65) is reported at 196 F. 2d 879.

JURISDICTION

The judgment of the Court of Appeals was entered on May 20, 1952 (R. 66), and a petition for a rehearing (R. 67-69) was denied on June 17,

1952 (R. 70). The petition for a writ of certiorari was filed on July 16, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTION PRESENTED

Whether an indictment charging a conspiracy to injure qualified voters in the free exercise of their right to vote in a primary election for candidates for United States Senator and Congressman, by means of impersonation of voters, casting of false votes, and causing election officers to make a false return of the results of the election, was sufficient to allege an offense under 18 U.S.C. 241.

STATUTE INVOLVED

18 U.S.C. 241 provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
>
> They shall be fined not more than $5.000 or imprisoned not more than ten years, or both.

STATEMENT

Petitioners Crolich, Fairchild, and Holman were jointly indicted under 18 U.S.C. 241 (*supra*, p. 2) in the United States District Court for the Southern District of Alabama for conspiracy to injure, oppress, threaten, and intimidate citizens in the free exercise and enjoyment of rights and privileges relating to voting at a congressional election, secured to them by the Constitution and laws of the United States (R. 9-14). Petitioners' motions to dismiss the indictment for failure to state an offense under the laws of the United States and motions for a bill of particulars were overruled (R. 15-28, 33-35, 53-55).[1] They then withdrew their former pleas of not guilty and entered pleas of *nolo contendere* (R. 35-36, 55-56). Crolich was sentenced to 18 months' imprisonment and a $2,000 fine (R. 37-38); and Fairchild and Holman were sentenced to imprisonment for one year and one day and a $750 fine (R. 57-

[1] It was stipulated in the record before the Court of Appeals that, because the pleadings of petitioner Fairchild were identical in form and in substance with those of petitioner Crolich, only Crolich's pleadings need be printed (R. 7-8). The pleadings of petitioner Holman are not included in the record. However, petitioner's brief (Pet. 3-4) states that Holman's pleadings were substantially the same as those of Crolich and Fairchild; that although there was no formal order consolidating Holman's appeal with that of the other two, the two cases were argued and submitted at the same time; that the court rendered only one opinion; and that, therefore, one petition for certiorari for all three of the parties is being filed.

58, 63). On appeal (R. 38-39, 58-59) the Court of Appeals unanimously affirmed the judgments (R. 66).

The substance of the indictment was as follows:

On May 2, 1950, a primary election was held in the State of Alabama as an integral part of the general election scheduled for November 7, 1950, to elect, among other officials, a United States Senator and members of the House of Representatives. Qualified voters of certain designated wards in the First Congressional District in Mobile, Alabama, whose names were too numerous to include in the indictment, and were referred to therein as "voters" (R. 10), had rights and privileges guaranteed to them by the Constitution and laws of the United States to vote at the election for a candidate for each of said offices, and to have their ballots given full value (R. 11).

From January 1, 1950, until the indictment was returned on December 14, 1950, the petitioners, along with numerous others, conspired to injure and deprive the aforesaid Alabama voters in the exercise of such rights (R. 11-13). It was part of this conspiracy that the defendants would (1) prevent legal voters from casting their ballots by procuring unqualified persons to impersonate them and to vote in their names; (2) cast and cause to be cast in the aforesaid wards false, forged, and fictitious votes and have them counted and certified, thereby diluting the value and effect of the votes legally cast; (3) procure unqualified voters to impersonate

lawful voters in the aforesaid wards and cast false, illegal and forged votes in the name of the lawful voters with the intent to have the illegal votes counted and certified, thereby diluting the effect of the votes legally cast; and (4) by such means cause the election officials of the aforesaid wards to make a false return of the results of the election (R. 13-14).

ARGUMENT

1. Petitioners' attack on the applicability of 18 U.S. 241 to the acts charged in this indictment is in reality an attempt to have this Court overrule *United States* v. *Saylor,* 322 U.S. 385, which sustained the sufficiency of an indictment charging a conspiracy to violate the rights of voters in certain districts at a federal election by stuffing ballot boxes with false ballots. Here the indictment charges conspiracy against certain specified groups of voters in particular districts by falsely impersonating voters and thus casting false ballots. The distinction between casting false ballots fraudulently obtained in blank, as was done in *Saylor,* and casting false ballots obtained by fraudulently impersonating a voter is, manifestly, without substance. In either case the value of each individual vote lawfully cast is diminished.

Petitioners attempt to distinguish *Saylor* on the ground that there the indictment specified as the voters injured those who had voted for the Republican candidate (the ballot stuffing having been to aid his opponent), whereas here the voters

alleged to have been injured were all those registered as voters in the specified wards. They argue that this difference takes this indictment out of the rationale of *Saylor* and *United States* v. *Mosley*, 238 U.S. 383, which held that the predecessor of 18 U.S. 241 protected the individual voter's right to have his vote counted, and brings it within the rationale of *United States* v. *Bathgate*, 246 U.S. 220, 226, which held that, while the statute guards personal rights, it does not reach "the political, non-judicable one common to all that the public shall be protected against harmful acts." However, as petitioners admit, it is the right of the voter, and not of the candidate, which is controlling. *United States* v. *Gradwell*, 243 U.S. 476. The basis of the *Saylor* decision is that the effect of false ballots is "certainly to prevent an honest count by the return board of the votes lawfully cast." 322 U.S. at p. 389.[2] The acts here

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[2] See also *Prichard* v. *United States*, 181 F. 2d 326, 331 (C.A. 6), affirmed for lack of a quorum, 339 U.S. 974, holding an indictment charging the stuffing of a ballot box sufficient under 18 U.S.C. 241, where the Court of Appeals stated:

> The deposit of forged ballots in the ballot boxes, no matter how small or great their number, dilutes the influence of honest votes in an election, and whether in greater or less degree is immaterial. The right to an honest count is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States.

For a comprehensive annotation on the subject of vote fraud offenses under 18 U.S.C. 241, see 162 A.L.R. 1388-1394.

charged have exactly that effect, whether the false ballots were for one candidate or another. Hence, the court below properly held that the *Saylor* decision is controlling.[3] Moreover, paragraph 6 of the indictment alleges that petitioners "did prevent, obstruct and hinder legal and qualified voters from casting a ballot in the said election by procuring and causing unqualified and unauthorized persons to impersonate them and vote in their name and stead" (R. 13). Manifestly, this alleges a direct deprivation of the immediate personal right to vote of the person so impersonated. It clearly falls within the rationale of the *Mosely* case, *supra*.

There is no merit in petitioners' contention that the indictment was defective in that it did not charge a conspiracy with respect to votes for any federal office (Pet. 10-11). In the indictment (R. 9-14) paragraph 1 refers to a primary election in designated wards for a "United States Senator and members of the House of Representatives of the Congress of the United States"; paragraph 2 alludes to the primary election for "United States Senator from the State of Alabama and Congressman from the First Congressional District of Alabama"; and paragraph 3 mentions "said elec-

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[3] Admittedly, petitioner's argument, based on the repeal of Section 19 of the Enforcement Act of 1870, 16 Stat. 140, 144, repealed February 8, 1894, 28 Stat. 36 (Pet. 14-15), was rejected by the majority of this Court in the *Saylor* decision.

tion for a candidate for each of said offices." In the charging part of the indictment, in paragraph 5, unequivocal reference is made to the "right to cast a ballot for legally qualified persons for the aforesaid offices of the United States Senator and for United States Representative for the First Congressional District of Alabama." The particularizing parts of the indictment, in paragraphs 6 through 9, speak of the "said election" in the "aforesaid Wards," referring back to the primary election for United States Senator and Congressman in the wards theretofore designated. It is submitted that when the indictment is read in its entirety, it charges in clear and unmistakable terms that the purpose of the conspiracy was to deprive the named citizens and qualified voters of their right to cast their votes for candidates for federal offices.[4]

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[4] *Blitz* v. *United States*, 153 U.S. 308, cited by petitioner (Pet. 10), is not apposite. It did not involve a conspiracy under 18 U.S.C. 241, but an indictment under Section 19 of the Enforcement Act, involving substantive offenses. The indictment was held fatally defective because it failed to charge clearly that in impersonating a voter the accused voted for a representative of Congress. But in the instant case, as shown above, the indictment did charge violation of suffrage rights with respect to a primary election for federal offices.

CONCLUSION

This case was correctly decided under principles of law established by the decisions of this Court. It is submitted that the petition for a writ of certiorari should be denied.

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